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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES WATERKEEPER, a
California non-profit association, and
CALIFORNIA COASTKEEPER
ALLIANCE, a California non-profit
organization,

Plaintiff,

v.

ESTES EXPRESS LINES, INC., dba Estes
West, a California corporation,

Defendant.

Civil Case No.:

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF AND
CIVIL PENALTIES**

**(Federal Water Pollution Control
Act, 33 U.S.C. §§ 1251 *et seq.*)**

1 Los Angeles Waterkeeper (“Waterkeeper”) and California Coastkeeper Alliance
2 (“Coastkeeper”) (collectively, “Plaintiffs”), by and through their counsel, hereby alleges:

3 **I. JURISDICTION AND VENUE**

4 1. This is a civil suit brought under the citizen suit enforcement provision of
5 the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (“Clean Water Act”
6 or “CWA”). *See* 33 U.S.C. § 1365. This Court has subject matter jurisdiction over the
7 parties and this action pursuant to 33 U.S.C. § 1365(a)(1) and 28 U.S.C. §§ 1331 and
8 2201 (an action for declaratory and injunctive relief arising under the Constitution and
9 laws of the United States).

10 2. On February 10, 2022, Waterkeeper and Coastkeeper issued a 60-day notice
11 letter (“Notice Letter”), to Estes Express Lines, Inc. (“Estes” or “Defendant”), as the
12 owners and operators of the Estes West, La Mirada Terminal (“La Mirada”) facility under
13 its control. The Notice Letter informed Defendant of their violations of California’s
14 Storm Water Permit for Discharges of Storm Water Associated with Industrial Activities
15 (*National Pollutant Discharge Elimination System (NPDES) General Permit No.*
16 *CAS000001, State Water Resources Control Board Water Quality Order No. 2014-0057-*
17 DWQ and amended by Order No. 2015-0122 –DWQ and incorporating: 1) Federal
18 Sufficiently Sensitive Test Method Ruling; 2) Total Maximum Daily Loads (“TMDL”)
19 Implementation Requirements; and 3) Statewide Compliance Options Incentivizing On-
20 Site or Regional Storm Water Capture and Use, and as subsequently amended by Order
21 2018-0028-DWQ (effective July 1, 2020) (“Storm Water Permit”) and the Clean Water
22 Act at the industrial facility located at 14727 Alondra Boulevard, La Mirada, CA 90638
23 with Waste Discharger Identification Number (“WDID”) 4 19I007131 (“Facility”).

24 3. The Notice Letter informed Defendant of Plaintiffs’ intent to file suit against
25 Defendant to enforce the Storm Water Permit and the Clean Water Act.

26 4. The Notice Letter was sent to Estes’ Chief Executive Officer, Manager of
27 the La Mirada Terminal, and the Agent for Service of Process (40 C.F.R. § 135.2(a)(2)).
28 The Notice Letter was also sent to the Acting Administrator of the United States

1 Environmental Protection Agency (“EPA”), the Acting Administrator of EPA Region IX,
2 the Executive Director of the State Water Resources Control Board (“State Board”), and
3 the Executive Officer of the Regional Water Quality Control Board, Los Angeles Region,
4 (“Regional Board”) as required by Section 505(b) of the CWA, 33 U.S.C. §
5 1365(b)(1)(A). The Notice Letter is attached hereto as **Exhibit A** and is fully
6 incorporated herein by reference.

7 5. More than sixty (60) days have passed since the Notice Letter was served on
8 the Defendant and the State and Federal agencies. Plaintiffs are informed and believe,
9 and thereon allege, that neither the EPA nor the State of California has commenced or is
10 diligently prosecuting an action to redress the violations alleged in the Notice Letter and
11 in this complaint. *See* 33 U.S.C. § 1365(b)(1)(B). This action is not barred by any prior
12 administrative penalty under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

13 6. Venue is proper in the Central District of California pursuant to Section
14 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), because the sources of the violations are
15 located within this judicial district.

16 7. Plaintiffs seek relief for Defendants’ substantive and procedural violations of
17 the Storm Water Permit and the Clean Water Act resulting from industrial activities at the
18 Facility.

19 **II. INTRODUCTION**

20 8. With every significant rainfall event, hundreds of millions of gallons of
21 polluted rainwater, originating from industrial operations such as the Facility referenced
22 herein, pour into the storm drains and local waterways. The consensus among regulatory
23 agencies and water quality specialists is that storm water pollution accounts for more than
24 half of the total pollution entering marine and river environments each year. These
25 surface waters, known as Receiving Waters, are ecologically sensitive areas. Although
26 pollution and habitat destruction have drastically diminished once abundant and varied
27 fisheries, these waters are still essential habitat for dozens of fish and bird species as well
28 as macro-invertebrate and invertebrate species. Storm water and non-storm water contain

1 sediment, heavy metals, such as aluminum, iron, chromium, copper, lead, mercury,
2 nickel, and zinc, as well as, high concentrations of nitrate and nitrite, and other pollutants.
3 Exposure to polluted storm water harms the special aesthetic and recreational
4 significance that the surface waters have for people in the surrounding communities. The
5 public's use of the surface waters exposes many people to toxic metals and other
6 contaminants in storm water and non-storm water discharges. Non-contact recreational
7 and aesthetic opportunities, such as wildlife observation, are also impaired by polluted
8 discharges to the Receiving Waters.

9 9. High concentrations of total suspended solids ("TSS") degrade optical water
10 quality by reducing water clarity and decreasing light available to support photosynthesis.
11 TSS has been shown to alter predator-prey relationships (for example, turbid water may
12 make it difficult for fish to hunt prey). Deposited solids alter fish habitat, aquatic plants,
13 and benthic organisms. TSS can also be harmful to aquatic life because numerous
14 pollutants, including metals and polycyclic aromatic hydrocarbons, are absorbed onto
15 TSS. Thus, higher concentrations of TSS result in higher concentrations of toxins
16 associated with those sediments. Inorganic sediments, including settleable matter and
17 suspended solids, have been shown to negatively impact species richness, diversity, and
18 total biomass of filter feeding aquatic organisms on bottom surfaces. Storm water
19 discharged with high pH can damage the gills and skin of aquatic organisms and cause
20 death at levels above 10 standard units. The pH scale is logarithmic, and the solubility of
21 a substance varies as a function of the pH of a solution. A one-whole-unit change in SU
22 represents a tenfold increase or decrease in ion concentration. If the pH of water is too
23 high or too low, the aquatic organisms living within it will become stressed or die.

24 10. This complaint seeks a declaratory judgment, injunctive relief, the
25 imposition of civil penalties, and the award of costs, including attorney and expert
26 witness fees, for Defendant's substantive and procedural violations of the Storm Water
27
28

1 Permit and the Clean Water Act resulting from Defendant's operations at the Facility.¹

2 11. Plaintiffs specifically allege violations regarding Defendant's discharge of
3 pollutants from the Facility into waters of the United States; violations of the monitoring,
4 reporting, and best management practice requirements; and violations of other procedural
5 and substantive requirements of the Storm Water Permit and the Clean Water Act, are
6 ongoing and continuous.

7 **III. PARTIES**

8 **A. Los Angeles Waterkeeper & California Coastkeeper Alliance**

9 12. Waterkeeper and Coastkeeper are separate non-profit 501(c)(3) public
10 benefit corporations organized under the laws of the State of California. Waterkeeper
11 maintains an office at 120 Broadway, Suite 105, Santa Monica, California 90401 and
12 Coastkeeper maintains an office at 1100 11th Street, 3rd Floor, Sacramento, California
13 95814.

14 13. Waterkeeper and Coastkeeper's members live and/or recreate in and around
15 Los Angeles and Long Beach area. Waterkeeper and Coastkeeper are dedicated to the
16 preservation, protection, and defense of the environment, wildlife, and natural resources
17 of local surface waters. To further these goals, Waterkeeper and Coastkeeper actively
18 seek federal and state agency implementation of the Clean Water Act and, where
19 necessary, directly initiates enforcement actions on behalf of itself and others.

20 14. Waterkeeper and Coastkeeper members work, own homes and live in Los
21 Angeles County and use and enjoy the waters near the Facility, including Coyote Creek
22 and the San Gabriel River and the bordering parks, pathways, golf, courses and athletic
23 fields, and further downstream, the San Gabriel River Estuary, Seal Beach, and the
24 Pacific Ocean the ("Receiving Waters") for biking, boating, kayaking, viewing wildlife,
25 walking, running, and horseback riding.

26 15. Discharges of polluted storm water and non-storm water from the Facility

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28¹ The Facility is fully described in Section V below.

1 degrade water quality and harm aquatic life in Coyote Creek, the San Gabriel River and
2 its estuary, Seal Beach, and the Pacific Ocean, and impair Waterkeeper and Coastkeeper
3 and their members' use and enjoyment of those waters.

4 16. The violations of the Storm Water Permit and Clean Water Act at the
5 Facility are ongoing and continuous, including but not limited to Defendant's discharge
6 of polluted storm water from the Facility. Thus, the interests Plaintiffs' members have
7 been, are being, and will continue to be adversely affected by Defendant's failure to
8 comply with the Storm Water Permit and the Clean Water Act.

9 17. Continuing commission of the acts and omissions alleged above will
10 irreparably harm Plaintiffs and their members, for which they have no plain, speedy or
11 adequate remedy at law.

12 18. The interests of Waterkeeper and Coastkeeper and their members have been,
13 are being, and will continue to be adversely affected by Defendant's failure to comply
14 with the Clean Water Act and the Storm Water Permit. The relief sought herein will
15 redress the harms to Plaintiffs caused by Defendant's activities.

16 **B. The Owners and/or Operators of the Facility**

17 19. Plaintiffs are informed and believe, and thereon allege, that Estes maintains
18 its headquarters at 3901 West Board Street, Richmond, VA 23230.

19 20. Plaintiffs are informed and believe, and thereon allege, that Estes is the
20 owner and operator of the La Mirada Terminal.

21 21. Plaintiffs are informed and believe, and thereon allege, that Estes Express
22 Lines, Inc. is an active California corporation registered in California.

23 22. Plaintiffs are informed and believe, and thereon allege, that the name and
24 address of the Registered Agent for Estes is CSC Lawyers Incorporating Service 2710
25 Gateway Oaks Dr., Ste. 150N, Sacramento, CA 95833.

26 23. Waterkeeper and Coastkeeper refer to Defendant Estes and its management
27 herein as the "Owners/Operators" of the Facility.

28 **IV. STATUTORY BACKGROUND**

1 **A. The Clean Water Act**

2 24. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the
3 discharge of any pollutant into waters of the United States unless the discharge complies
4 with various enumerated sections of the CWA. Among other things, Section 301(a)
5 prohibits discharges not authorized by, or in violation of, the terms of a National
6 Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section
7 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342(b).

8 25. Section 402(p) of the CWA establishes a framework for regulating
9 municipal and industrial storm water discharges under the NPDES program. 33 U.S.C. §
10 1342(p). States with approved NPDES permit programs are authorized by Section 402(p)
11 to regulate industrial storm water discharges through individual permits issued to
12 dischargers and/or through the issuance of a single, statewide general permit applicable to
13 all industrial storm water dischargers. 33 U.S.C. § 1342.

14 26. Section 301(b) of the Clean Water Act requires that all point source
15 dischargers, including those discharging polluted storm water, must achieve technology-
16 based effluent limitations by utilizing Best Available Technology Economically
17 Achievable (“BAT”) for toxic and nonconventional pollutants and the Best Conventional
18 Pollutant Control Technology (“BCT”) for conventional pollutants. *See* 33 U.S.C. §
19 1311(b).

20 27. The Clean Water Act requires point source discharges of pollutants to
21 navigable waters be regulated by an NPDES permit. 33 U.S.C. §§ 1311(a) and 1342.; *see*
22 40 C.F.R. § 122.26(c)(1).

23 28. The “discharge of a pollutant” means, among other things, “any addition of
24 any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12); *see* 40
25 C.F.R. § 122.2.

26 29. The term “pollutant” includes “dredged spoil, solid waste, incinerator
27 residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological
28 materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar

1 dirt and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. §
2 1362(6); *see* 40 C.F.R. § 122.2.

3 30. The term “point source” means any “discernible, confined and discrete
4 conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well,
5 discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel
6 or other floating craft, from which pollutants are or may be discharged.” 33 U.S.C. §
7 1362(14); *see* 40 C.F.R. § 122.2.

8 31. “Navigable waters” means “Waters of the United States.” 33 U.S.C. §
9 1362(7).

10 32. The EPA promulgated regulations for the Section 402 NPDES permit
11 program defining “waters of the United States.” *See* 40 C.F.R. § 122.2. The EPA
12 interprets waters of the United States to include not only traditionally navigable waters
13 but also other waters, including waters tributary to navigable waters, wetlands adjacent to
14 navigable waters, and other waters including intermittent streams that could affect
15 interstate commerce. *See* 40 C.F.R. 120.2.

16 33. The Clean Water Act confers jurisdiction over non-navigable waters that are
17 tributaries to traditionally navigable waters where the non-navigable water at issue has a
18 significant nexus to the navigable water. *See Rapanos v. United States*, 547 U.S. 715
19 (2006); *see also N. Cal. River Watch v. City of Healdsburg*, 496 F.3d 993 (9th Cir. 2007).

20 34. A significant nexus is established if the “[receiving waters], either alone or
21 in combination with similarly situated lands in the region, significantly affect the
22 chemical, physical, and biological integrity of other covered waters.” *Rapanos*, 547 U.S.
23 at 779; *N. Cal. River Watch*, 496 F.3d at 999-1000.

24 35. A significant nexus is also established if waters that are tributary to
25 navigable waters have flood control properties, including functions such as the reduction
26 of flow, pollutant trapping, and nutrient recycling. *Rapanos*, 547 U.S. at 782; *N. Cal.*
27 *River Watch*, 496 F.3d at 1000-1001.

28 36. Section 505(a)(1) and Section 505(f) of the Clean Water Act provide for

1 citizen enforcement actions against any “person” who is alleged to be in violation of an
2 “effluent standard or limitation . . . or an order issued by the Administrator or a State with
3 respect to such a standard or limitation.” *See* 33 U.S.C. §§ 1365(a)(1) and 1365(f).

4 37. The Defendant is a “person[s]” within the meaning of Section 502(5) of the
5 Clean Water Act, 33 U.S.C. § 1362(5).

6 38. An action for injunctive relief is authorized under Section 505(a) of the
7 CWA, 33 U.S.C. § 1365(a).

8 39. Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the
9 Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4), each separate
10 violation of the CWA occurring after December 20, 2015 commencing five years prior to
11 the date of Notice of Violation and Intent to File Suit subjects Estes to a penalty of up to
12 \$59,937 per day per violation.

13 40. Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits
14 prevailing or substantially prevailing parties to recover litigation costs, including
15 attorneys’ fees, experts’ fees, and consultants’ fees.

16 **B. California’s Storm Water Permit**

17 41. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), allows each state to
18 administer its own EPA-approved NPDES permit program for regulating the discharge of
19 pollutants, including discharges of polluted storm water. States with approved NPDES
20 permit programs are authorized by Section 402(b) to regulate industrial storm water
21 discharges through individual NPDES permits issued to dischargers and/or through the
22 issuance of a statewide general NPDES permit applicable to all industrial storm water
23 dischargers. *See id.*

24 42. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the Administrator of
25 the EPA has authorized California to issue NPDES permits, including general NPDES
26 permits. California has designated the State Board and the Regional Boards to administer
27 its NPDES program. *City of Rancho Cucamonga v. Regional Water Quality Control Bd.*,
28 135 Cal. App. 4th 1377, 1380-81 (2006). In California, the State Board is charged with

1 regulating pollutants to protect California's water resources. *See* Cal. Water Code §
2 13001. The Storm Water Permit is a statewide general NPDES permit issued by the State
3 Board pursuant to Section 402 of the CWA, 33 U.S.C. §§ 1342(b), (p), and 40 C.F.R. §
4 123.25. Violations of the Storm Water Permit are also violations of the CWA. Storm
5 Water Permit, Section XXI(A).

6 43. Section 303 of the CWA, 33 U.S.C. § 1313, requires states to adopt Water
7 Quality Standards, including water quality objectives and beneficial uses for navigable
8 waters of the United States. 33 U.S.C. § 1313(a). The CWA prohibits discharges from
9 causing or contributing to a violation of such state Water Quality Standards. *See* 33
10 U.S.C. § 1311(b)(1)(C); 40 C.F.R. §§ 122.4(a), (d); 40 C.F.R. § 122.44(d)(1).

11 44. The State Board elected to issue a statewide general permit for industrial
12 discharges. The State Board issued the Storm Water Permit on or about November 19,
13 1991, modified the Storm Water Permit on or about September 17, 1992, and reissued the
14 Storm Water Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean
15 Water Act, 33 U.S.C. § 1342(p).

16 45. On July 1, 2015, the current Storm Water Permit became effective and was
17 issued as *NPDES General Permit No. CAS000001 State Water Resources Control Board*
18 *Water Quality Order No. 2014-0057-DWQ*. Storm Water Permit, Section I(A) (Finding
19 4).

20 46. On November 6, 2018, the State Board amended the Storm Water Permit
21 with Order No. No. 2015-0122 –DWQ, incorporating: 1) Federal Sufficiently Sensitive
22 Test Method Ruling; 2) TMDL Implementation Requirements; and 3) Statewide
23 Compliance Options Incentivizing On-Site or Regional Storm Water Capture and Use
24 (“2018 Permit Amendment”).

25 47. In order to discharge storm water lawfully in California, industrial
26 dischargers must secure coverage under the Storm Water Permit and comply with its
27 terms, or obtain and comply with an individual NPDES permit. Storm Water Permit,
28 Section I.A (Findings 8, 12). Prior to beginning industrial operations, dischargers are

1 required to apply for coverage under the Storm Water Permit by submitting a Notice of
2 Intent to Comply with the Terms of the Storm Water Permit to Discharge Storm Water
3 Associated with Industrial Activity (“NOI”) to the State Board. Storm Water Permit,
4 Section I.A (Finding 17), Section II.B.

5 **C. The Storm Water Permit’s Discharge Prohibitions, Effluent
6 Limitations, and Receiving Water Limitations**

7 48. The Storm Water Permit contains certain absolute prohibitions. The Storm
8 Water Permit prohibits the direct or indirect discharge of materials other than storm water
9 (“non-storm water discharges”), which are not otherwise authorized by an NPDES
10 permit, to the waters of the United States. Storm Water Permit, Discharge Prohibition
11 III(B).

12 49. Section V(A) of the Storm Water Permit requires dischargers to reduce or
13 prevent pollutants associated with industrial activity in storm water discharges through
14 the implementation of Best Available Technology Economically Achievable (“BAT”) for
15 toxic or non-conventional pollutants, and Best Conventional Pollutant Control
16 Technology (“BCT”) for conventional pollutants. Toxic pollutants are listed at 40 C.F.R.
17 § 401.15 and include copper, lead, and zinc, among others. Conventional pollutants are
18 listed at 40 C.F.R. § 401.16 and include biological oxygen demand, TSS, oil and grease
19 (“O&G”), pH, and fecal coliform.

20 50. Discharge Prohibition III(C) of the Storm Water Permit prohibits storm
21 water discharges that cause or threaten to cause pollution, contamination, or nuisance.

22 51. Under the CWA and the Storm Water Permit, dischargers must employ Best
23 Management Practices (“BMPs”) that constitute BAT and BCT to reduce or eliminate
24 storm water pollution. 33 U.S.C. § 1311(b). Storm Water Permit, Section V(A). EPA has
25 developed benchmark levels (“Benchmarks”) that are objective guidelines to evaluate
26 whether a permittee’s BMPs achieve compliance with the BAT/BCT standards. *See* Final
27 National Pollutant Discharge Elimination System (NPDES) General Permit for Storm
28 Water Discharges From Industrial Activities (“Multi-Sector Permit”), 80 Fed. Reg.

1 34,403, 34,405 (June 16, 2015); Multi-Sector Permit, 73 Fed. Reg. 56,572, 56,574 (Sept.
2 29, 2008); Multi-Sector Permit, 65 Fed. Reg. 64,746, 64,766-67 (Oct. 30, 2000).

3 52. The EPA's most recent, 2021 Parameter Benchmark Values for the
4 following parameters, among others, are as follows: TSS—100 mg/L; O&G—15 mg/L;
5 aluminum—1.1 mg/L; selenium—0.0031 mg/L; lead—0.082 mg/L; copper—0.0059
6 mg/L; zinc—0.12 mg/L; and pH—6-9 s.u.

7 53. The Storm Water Permit contains Numeric Action Levels (“NALs”) that
8 generally mirror the 2008 EPA Benchmark Values. *See* Storm Water Permit, Section
9 I(M)(Finding 62). Annual NALs, not accounting for water hardness, for the following
10 parameters are: pH—6.0 – 9.0 standard units; TSS—100 mg/L; copper—0.0332 mg/L;
11 zinc—0.26 mg/L; nickel—1.02 mg/L; iron—1.0 mg/L; nitrate plus nitrite as nitrogen
12 (“N+N”)—0.68 mg/L; O&G—15 mg/L; and aluminum—0.75 mg/L. Storm Water
13 Permit, Table 2 at 47. Instantaneous Maximum NALs, for the following parameters are:
14 pH—6.0 – 9.0 s.u.; TSS—400mg/L; O&G—25mg/L. *Id.* Additional EPA Benchmarks
15 for heavy metals, which depend on the hardness of the receiving water, also apply to
16 storm water discharges from the Facility

17 54. Receiving Water Limitation VI(B) of the Storm Water Permit prohibits
18 storm water discharges from adversely impacting human health or the environment.

19 55. Discharges with pollutant levels that exceed levels known to adversely
20 impact aquatic species and the environment are violations of the Storm Water Permit’s
21 Receiving Water Limitation. Storm Water Permit, Section VI(B).

22 56. Receiving Water Limitation VI(A) of the Storm Water Permit prohibit storm
23 water discharges that cause or contribute to an exceedance of any “applicable Water
24 Quality Standard in a Statewide Water Quality Control Plan or the applicable Regional
25 Board’s Basin Plan.”

26 57. Water Quality Standards (“WQS”) are pollutant concentration levels
27 determined by the State Board, the various Regional Boards, and the EPA to be
28 protective of the beneficial uses of the waters that receive polluted discharges.

1 58. The State of California regulates water quality through the State Board and
2 the nine Regional Boards. Each Regional Board maintains a separate Water Quality
3 Control Plan which contains WQS for water bodies within its geographic area.

4 59. The State Water Quality Control Board, Los Angeles Region, has issued the
5 Water Quality Control Plan for the Los Angeles Region (“the Basin Plan”) to establish
6 water quality objectives, implementation plans for point and non-point source discharges,
7 prohibitions, and to further statewide plans and policies. The Basin Plan sets forth water
8 quality objectives for dissolved metals such as aluminum, arsenic, and mercury. Basin
9 Plan, Table 3-8. The Basin Plan states that the waters shall not receive sediment,
10 settleable materials, or suspended materials that cause nuisance or adversely affect the
11 waters’ beneficial uses. *Id.* at 3-44. The Basin Plan also provides that “Toxic pollutants
12 shall not be present at levels that will bioaccumulate in aquatic life to levels which are
13 harmful to aquatic life or human health.” *Id.* at 3-29.

14 60. The Basin Plan specifies potential and existing beneficial uses for Coyote
15 Creek and the San Gabriel River including municipal and domestic supply, industrial
16 process and service supply, warm freshwater habitat, wildlife habitat, and habitat for rare,
17 threatened, or endangered species. Basin Plan, Table 2-1. The Basin Plan further specifies
18 beneficial uses for the San Gabriel River Estuary. *Id.*

19 61. Surface waters that cannot support the Beneficial Uses of those waters listed
20 in the Basin Plan are designated as impaired water bodies pursuant to Section 303(d) of
21 the Clean Water Act, 33 U.S.C. §1313(d).

22 62. Coyote Creek is listed for the following water quality impairments:
23 ammonia, cyanide, copper, dissolved copper, diazinon, dioxin, dissolved oxygen, ecoli &
24 enterococcus, lead, nickel, nitrate (nitrite as nitrogen), pH, PCBs, selenium, and indicator
25 bacteria. Reach 1 of the San Gabriel River is also impaired for pH and temperature.
26 Lower reaches of the San Gabriel River and the San Gabriel River Estuary are also listed
27 for impairments on the Section 303(d) list. The Receiving Waters are impaired, and
28 Defendant’s discharges of pollutants above the WQS contributes to the continued

1 impairment of the receiving waters' beneficial uses.

2 63. In addition, EPA has promulgated WQS for toxic priority pollutants in all
3 California water bodies ("California Toxics Rule" or "CTR"), which apply to the
4 Receiving Waters, unless expressly superseded by the Basin Plan. 40 C.F.R. § 131.38.
5 The CTR sets forth lower numeric limits for zinc and other pollutants; CTR criteria can
6 be as low as 0.12 mg/L for zinc in freshwater surface waters with water hardness
7 calculation of 50 mg/L.²

8 64. The CTR includes further numeric criteria set to protect human health and
9 the environment in the State of California. *See* Establishment of Numeric Criteria for
10 Priority Toxic Pollutants for the State of California Factsheet, EPA-823-00-008 (April
11 2000), available at: <https://www.epa.gov/wqs-tech/water-quality-standards-establishment-numeric-criteria-priority-toxic-pollutants-state>.

13 65. Discharges with pollutant levels in excess of the CTR criteria, the Basin
14 Plan, and/or other applicable WQS are violations of the Storm Water Permit's Receiving
15 Water Limitations. *See* Storm Water Permit, Section VI(A).

16 **D. The Storm Water Permit's Numeric Effluent Limitations**

17 66. Effective July 1, 2020, the Storm Water Permit establishes numeric effluent
18 limitations ("NELs") for facilities that discharge storm water associated with industrial
19 activities into water bodies that have approved TMDLs set forth in Storm Water Permit,
20 Attachment E. TMDLs in place for pollutants discharged from industrial facilities to the
21 San Gabriel River include metals and selenium. Storm Water Permit, Attachment E,
22 Table E-1.

23 67. Discharges from the Facility are subject to the San Gabriel River TMDL
24 requirements for metals, which include the following NELs: copper—0.027 mg/L, lead—
25 0.106 mg/L, and zinc—0.158 mg/L. Storm Water Permit, Attachment E, Table E-2.

27 2 The CTR numeric limits, or "criteria," are expressed as dissolved metal concentrations
28 in the CTR, but the Storm Water Permit requires permittees to report their sample results
as total metal concentrations. *See* Storm Water Permit, Attachment H at 18.

1 68. An instantaneous maximum NEL exceedance occurs when two (2) or more
2 analytical results from samples taken for any single parameter within a reporting year³
3 exceeds the instantaneous maximum NEL value. Storm Water Permit, Section V(C)(1).
4 An exceedance of an NEL is a violation of the Storm Water Permit *Id.*

5 69. Plaintiffs are informed and believe, and thereon allege, that there were five
6 (5) zinc and eight (8) copper NEL exceedances since the adoption of the NELs for
7 Coyote Creek in 2020.

8 **E. The Storm Water Permit's Storm Water Pollution Prevention Plan
9 Requirements**

10 70. Dischargers must develop and implement a Storm Water Pollution
11 Prevention Plan ("SWPPP") at the time industrial activities begin. Storm Water Permit,
12 Sections I(I)(Finding 54) and X(B). The SWPPP must identify and evaluate sources of
13 pollutants associated with industrial activities that may affect the quality of storm water
14 and authorized non-storm water discharges from the facility. Storm Water Permit,
15 Section X(G). The SWPPP must identify and evaluate sources of pollutants associated
16 with industrial activities that may affect the quality of storm water and authorized non-
17 storm water discharges from the facility. Storm Water Permit, Section X(G). The SWPPP
18 must identify and implement site-specific BMPs to reduce or prevent pollutants
19 associated with industrial activities in storm water and authorized non-storm water
20 discharges. Storm Water Permit, Section X(H). The SWPPP must include BMPs that
21 achieve pollutant discharge reductions attainable via BAT and BCT. Storm Water Permit,
22 Sections I(D) (Finding 32) and X(C).

23 71. The SWPPP must include: a narrative description and summary of all
24 industrial activity, potential sources of pollutants, and potential pollutants; a site map
25 indicating the storm water conveyance system, associated points of discharge, direction
26 of flow, areas of actual and potential pollutant contact, including the extent of pollution-
27 generating activities, nearby water bodies, and pollutants control measures; a description

28 ³ A reporting year under the Storm Water Permit is July 1 to June 30.

1 of storm water management practices; a description of the BMPs to be implemented to
2 reduce or prevent pollutants in storm water discharges and authorized non-storm water
3 discharges; the identification and elimination of non-storm water discharges; the location
4 where significant materials are being shipped, stored, received, and handled, as well as
5 the typical quantities of such materials and the frequency with which they are handled; a
6 description of dust and particulate-generating activities; and a description of individuals
7 and its current responsibilities for developing and implementing the SWPPP. Storm
8 Water Permit, Section X.

9 72. The objectives of the SWPPP are to identify and evaluate sources of
10 pollutants associated with industrial activities that may affect the quality of storm water
11 discharges, to identify and implement site-specific BMPs to prevent the exposure of
12 pollutants to storm water, and to reduce or prevent the discharge of polluted storm water
13 from industrial facilities. Storm Water Permit, Section X.

14 73. The Storm Water Permit requires the discharger to evaluate the SWPPP on
15 an annual basis and revise it as necessary to ensure compliance with the Storm Water
16 Permit. Storm Water Permit, Section X(A)-(B). The Storm Water Permit also requires
17 that the discharger conduct an annual comprehensive site compliance evaluation that
18 includes a review of all visual observation records, inspection reports and sampling and
19 analysis results, a visual inspection of all potential pollutant sources for evidence of, or
20 the potential for, pollutants entering the drainage system, a review and evaluation of all
21 BMPs to determine whether the BMPs are adequate, properly implemented and
22 maintained, or whether additional BMPs are needed, and a visual inspection of equipment
23 needed to implement the SWPPP. Storm Water Permit, Section X(B) and Section XV.

24 74. The SWPPP and site maps must be assessed annually and revised as
25 necessary to ensure accuracy and effectiveness. Storm Water Permit, Sections I(J)
26 (Finding 55) and X(B)(1). Significant SWPPP revisions must be certified and submitted
27 by the discharger via the State Board's electronic database, called the Storm Water
28 Multiple Application & Report Tracking System ("SMARTS") within 30 days. Storm

1 Water Permit, Section X(B)(2). Dischargers are required to submit revisions to the
2 SWPPP that are determined to not be significant every three (3) months in the reporting
3 year. *Id.* at Section X(B)(3); Storm Water Permit, Fact Sheet, Section II(I)(1).

4 **F. The Storm Water Permit’s Monitoring Implementation Program
5 Requirements**

6 75. The Storm Water Permit requires facility operators to develop and
7 implement a Monitoring Implementation Plan (“MIP”). Storm Water Permit Sections
8 X(I) and XI(A)–(D). The MIP must ensure that storm water discharges are in compliance
9 with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations
10 specified in the Storm Water Permit. Storm Water Permit Section XI. The MIP must
11 ensure that practices at the facility to prevent or reduce pollutants in storm water and
12 authorized non-storm water discharges are evaluated and revised to meet changing
13 conditions at the facility, including revision of the SWPPP. *Id.*

14 76. Further objectives of the MIP are to ensure that BMPs have been adequately
15 developed and implemented, revised if necessary, and to ensure that storm water and
16 non-storm water discharges are in compliance with the Storm Water Permit’s Discharge
17 Prohibitions, Effluent Limitations, and Receiving Water Limitations. Storm Water
18 Permit, Section XI.

19 77. The MIP aids in the implementation and revision of the SWPPP and
20 measures the effectiveness of BMPs to prevent or reduce pollutants in storm water
21 discharges. *Id.*

22 78. The Storm Water Permit requires facility operators to monitor and sample
23 storm water discharges to ensure that the facility is complying with the terms of the
24 permit. Storm Water Permit, Sections I(J) (Findings 55–56) and XI.

25 79. Section XI(A)(4) of the Storm Water Permit requires that the MIP shall be
26 revised as necessary to ensure compliance with the Storm Water Permit.

27 80. Section XI(A) of the Storm Water Permit requires dischargers to conduct
28 monthly visual observations of storm water discharges.

1 81. Section XI(A)(2) of the Storm Water Permit requires dischargers to
2 document the presence of any floating and suspended materials, O&G, discolorations,
3 turbidity, or odor in the discharge, and the source of any pollutants in storm water
4 discharges from the facility. Dischargers are required to maintain records of observations,
5 observation dates, discharge locations observed, and responses taken to reduce or prevent
6 pollutants from contacting storm water discharges. *See* Storm Water Permit, Section
7 XI(A)(3). The Storm Water Permit also requires dischargers to revise the SWPPP as
8 necessary to ensure that BMPs are effectively reducing and/or eliminating pollutants at
9 the facility. Storm Water Permit, Section X(B)(1).

10 82. The Storm Water Permit requires dischargers to visually observe and collect
11 samples of storm water discharges from all locations where storm water is discharged.
12 Storm Water Permit, Section XI(B)(4).

13 83. Section XI(B)(1) of the Storm Water Permit requires sampling if a
14 precipitation event produces a discharge for at least one drainage area, and it is preceded
15 by forty-eight (48) hours with no discharge from any drainage area (“Qualifying Storm
16 Event” or “QSE”).

17 84. Section XI(B)(2) of the Storm Water Permit requires dischargers to collect
18 and analyze storm water samples from two (2) QSEs within the first half of each
19 reporting year (July 1 to December 31), and two (2) QSEs within the second half of each
20 reporting year (January 1 to June 30).

21 85. Section XI(B)(6) of the Storm Water Permit requires dischargers to analyze
22 storm water samples for TSS, O&G, pH, and additional parameters identified by the
23 discharger on a facility-specific basis that serve as indicators of the presence of all
24 industrial pollutants identified in the pollutant source assessment, additional applicable
25 industrial parameters related to receiving waters with 303(d) listed impairments or
26 approved TMDLs, and additional parameters required by the Regional Water Board.

27 86. The Facility’s NOI classifies the Facility under Standard Industrial
28 Classification Code (“SIC”) 4213, covering trucking, except local. Under SIC Code

1 4213, Estes is required to sample storm water for TSS, O&G, and pH. Facilities must also
2 sample and analyze for additional parameters identified on a facility-specific basis to
3 reflect a facilities' pollutant source assessment, as required by the Storm Water Permit
4 and the Regional Board, and additional parameters related to receiving waters with
5 303(d) listed impairments. Storm Water Permit, Section XI(B)(6) When self-reporting
6 storm water sample results, Defendant samples for those pollutants listed above in this
7 paragraph and, due to the San Gabriel River Metals TMDL and pollutant source
8 assessment, Defendant also samples for copper, zinc, N+N, and phosphorus.

9 87. Section XVI of the Storm Water Permit requires dischargers to submit an
10 annual report with a Compliance Checklist that indicates whether a Discharger complies
11 with, and has addressed all applicable requirements of the permit, an explanation for any
12 non-compliance of requirements within the reporting year, as indicated in the Compliance
13 Checklist, an identification, including page numbers and/or Sections, of all revisions
14 made to the SWPPP within the reporting year, and the date(s) of the Annual Evaluation.
15

16 **V. STATEMENT OF FACTS**

17 **A. Estes Facility Site Description, Industrial Activities, and Pollutant**
Sources at the Facility

18 88. Defendant operates an industrial facility located at 14727 Alondra
19 Boulevard, La Mirada, CA 90638, in close proximity to Coyote Creek. The Facility's
20 NOI states that the site consists of approximately 15 acres. The Facility's primary
21 industrial purpose is a trucking terminal for cargo transportation and distribution. The
22 Facility's SWPPP last updated in December 2021 ("Facility SWPPP") lists the Facility
23 operates Monday through Friday, 1:00 am to 10:00 pm.
24

25 89. Plaintiffs are informed and believe, and thereon allege, that industrial
26 activities at the site, many of them conducted outdoors and exposed to storm water
27 include cargo loading and unloading, cargo and trailer storage, equipment storage,
28 maintenance activities, fueling operations at the fueling island; off-loading of diesel fuel

1 into the underground storage tanks (“USTs”); unloading used oils and various lubricants
2 from aboveground storage tanks (“ASTs”) and drums; outdoor parking of vehicles,
3 trucks, and trailers; outdoor storage of hazardous materials under canopies in the service
4 shop; and release of detergents and dirt and grime from washing tractors and trailers.

5 These activities occur at following areas identified in the Facility SWPPP:
6 warehouse/loading docks, maintenance shop, and fueling areas. Pollutants from these
7 activities accumulate at the Facility and contribute to pollutants in storm water. Pollutants
8 of concern at the Facility include but are not limited to, O&G, pH, TSS, N+N, iron,
9 aluminum, zinc, copper.

10 90. The industrial areas and associated activities generate and release pollutants
11 at the Facility which are discharged in storm water to the City of La Mirada municipal
12 storm drains on Alondra Boulevard, then into Coyote Creek and the San Gabriel River
13 and Pacific Ocean downstream.

14 91. Pursuant to the Facility SWPPP, storm water from three drainage areas at the
15 Facility flows to three discharge points, where (during sampling events) it is sampled
16 prior to discharge to the Municipal Separate Storm Sewer System. Industrial activities in
17 Drainage Area 1 (“SW-1”) included truck and trailer parking and storage, loading and
18 unloading freight at the building loading docks, trucking traffic, and a materials storage
19 shop. Industrial activities in Drainage Area 2 (“SW-2”) included vehicle maintenance and
20 repair, materials and equipment storage, hazardous materials storage, and fueling
21 activities. Industrial activities in Drainage Area 3 (“SW-3”) included truck and trailer
22 parking and storage, loading and unloading freight at the building loading docks, and
23 trucking traffic.

24 92. Coyote Creek, the San Gabriel River, and the Pacific Ocean are waters of the
25 United States, and which, upon information and belief, receive stormwater discharges
26 from the Facility.

27 **B. Coyote Creek and San Gabriel River**

28 93. Waterkeeper and Coastkeeper and their members utilize the Receiving

1 Waters for scientific study through pollution and habitat monitoring and restoration
2 activities.

3 94. The San Gabriel River watershed provides critical habitat for species,
4 including many that are endangered, threatened, rare, and endemic to Southern
5 California. These species include flora and fauna, including one of the largest runs of
6 steelhead trout in southern California and the largest remaining population of arroyo
7 chub.

8 **C. The Facility Storm Water Permit Coverage**

9 95. SMARTS lists the current Facility WDID number for the Facility as 4
10 19I007131 and coverage under the Storm Water Permit as “Active.”

11 96. The NOI for the Facility lists the Receiving Water as the Los Angeles River.
12 The 2021 SWPPP states that the Receiving Water is the Coyote Creek, North Fork.

13 97. Via search of the SMARTS database, Plaintiffs obtained a SWPPP for the
14 Facility revised in December 2021 (“Facility SWPPP”).

15 98. Plaintiffs are informed and believe, and thereon allege, that Estes has been
16 operating with an inadequately developed or implemented SWPPP in violation of Storm
17 Water Permit requirements since at least February 10, 2017. Estes has failed to evaluate
18 the effectiveness of its BMPs and to revise its SWPPP as necessary, resulting in the
19 Facility’s unlawful effluent limitation violations.

20 99. Plaintiffs are informed and believe, and thereon allege, that the Facility
21 Owners/Operators failed to implement any additional BMPs as required by the Storm
22 Water Permit. As such, the Owners and/or Operators are in daily violation of this
23 requirement of the Storm Water Permit.

24 100. Plaintiffs are informed and believe, and thereon allege, that Facility
25 Owners/Operators have failed to implement BMPs that achieve compliance with Storm
26 Water Permit or the CWA.

27 101. Plaintiffs are informed and believe, and thereon allege, that pollutants
28 associated with the Facility include, but are not limited to: aluminum, copper, zinc,

1 nitrate + nitrite nitrogen, TSS, O&G, and iron.

2 102. Plaintiffs are informed and believe, and thereon allege, that Estes has failed
3 to implement the minimum BMPs required by the Storm Water Permit, including good
4 housekeeping requirements; preventive maintenance requirements; spill and leak
5 prevention and response requirements; material handling and waste management
6 requirements; erosion and sediment controls; employee training and quality assurance;
7 and record keeping. Storm Water Permit, Sections X(H)(1)(a)–(g). The Facility SWPPP
8 does not contain a description of any erosion and sediment control BMPs that are in place

9 103. Plaintiffs are informed and believe, and thereon allege, that Estes has further
10 failed to implement sufficient advanced BMPs necessary to reduce or prevent discharges
11 of pollutants in its storm water sufficient to meet the BAT/BCT standards, including:
12 exposure minimization BMPs; containment and discharge reduction BMPs; treatment
13 control BMPs; or other advanced BMPs necessary to comply with the Storm Water
14 Permit's effluent limitations. Storm Water Permit, Section X(H)(2) According to the
15 Facility SWPPP, the Facility's advanced BMPs are limited to storing materials under
16 covered areas and using wattles.

17 104. Plaintiffs are informed and believe, and thereon allege, that there are also
18 insufficient minimal BMPs implemented, such as good housekeeping.

19 105. Plaintiffs are informed and believe, and thereon allege, that Defendant has
20 failed to collect sufficient storm water samples for analyses, in violation of the Storm
21 Water Permit, since at least February 10, 2017.

22 106. Plaintiffs are informed and believe, and thereon allege, that storm water
23 discharges containing excess levels of TSS, N+N, zinc, iron, copper, and aluminum occur
24 each time storm water discharges from Facility in violation of the Storm Water Permit
25 Sections III(C)–(D) and VI(A)–(B).

26 107. Plaintiffs are informed and believe, and thereon allege, that the repeated and
27 significant exceedances of Benchmark Levels demonstrate that the Owners/Operators
28 have failed and continue to fail to develop and/or implement BMPs to prevent the

1 exposure of pollutants to storm water and to prevent discharges of polluted storm water
2 and non-storm water from the Facility.

3 108. Plaintiffs are informed and believe, and thereon allege, that the
4 Owners/Operators have failed and continue to fail to evaluate the effectiveness of its
5 BMPs and adequately revise the Facility SWPPP, despite repeated and significant
6 concentrations of pollutants in Facility's storm water discharges. Further, Defendant has
7 failed to make changes to the Facility's training programs, or make any other changes
8 based upon events that would signal a need for required revisions or alteration of
9 practices.

10 109. Plaintiffs are informed and believe, and thereon allege, that pollutants,
11 including but not limited to those referenced herein, have been and continue to be tracked
12 throughout the Facility's operation areas.

13 110. Plaintiffs are informed and believe, and thereon allege, that the
14 Owners'/Operators' failure to properly address pollutant sources and pollutants results in
15 the exposure of pollutants associated with its industrial activities to precipitation, and that
16 this results in discharges of polluted storm water from Facility and into local waterways
17 in violation of the Storm Water Permit and/or the CWA.

18 111. Plaintiffs are informed and believe, and thereon allege, that the
19 Owners'/Operators' failure to properly address these pollutants and its sources results in
20 the exposure of pollutants to precipitation, which carries these pollutants with storm
21 water flows from Facility into the Receiving Waters.

22 **D. Storm Water Discharges from the Facility**

23 112. As discussed above and as detailed in the Facility SWPPP, there are three
24 discharge points at the Facility where storm water leaves the Facility and is discharged to
25 the City of La Mirada municipal storm drains on Alondra Boulevard, then into Coyote
26 Creek and the San Gabriel River and Pacific Ocean downstream.

27 113. Plaintiffs are informed and believe, and thereon allege, that Estes has self-
28 reported NAL exceedances from the Facility over the past five (5) reporting years and is

1 currently in the State Board's Exceedance Response Action ("ERA") Program for NAL
2 exceedances of zinc, copper and TSS.

3 **E. The Facility's Storm Water Discharges to the Receiving Waters Contain
4 Elevated Levels of Pollutants**

5 114. Plaintiffs are informed and believe, and thereon allege, that pollutants from
6 the Facility discharge with storm water to the City of La Mirada municipal storm drains,
7 then into Coyote Creek and the San Gabriel River and Pacific Ocean downstream.

8 115. The EPA promulgated regulations for the Section 402 NPDES permit
9 program defining waters of the United States. *See* 40 C.F.R. § 122.2. The EPA interprets
10 waters of the United States to include not only traditionally navigable waters but also
11 other waters, including waters tributary to navigable waters, wetlands adjacent to
12 navigable waters, and other waters including intermittent streams that could affect
13 interstate commerce. 40 C.F.R. §120.2. The CWA requires any person who discharges or
14 proposes to discharge pollutants into waters of the United States to submit an NPDES
15 permit application. 40 C.F.R. § 122.21(a)(1).

16 116. Plaintiffs are informed and believe, and thereon allege, that the
17 Owners'/Operators' failure to properly address these pollutants and its sources results in
18 the exposure of pollutants to precipitation, which carries these pollutants with storm
19 water flows into Coyote Creek and into the San Gabriel River, its estuary, and the Pacific
20 Ocean, all waters of the United States.

21 117. Storm water discharges containing pollutants including, but not limited to,
22 heavy metals such as zinc, lead, and copper, and iron adversely affect the aquatic
23 environment.

24 118. Samples of storm water discharges collected at the Facility contain
25 pollutants including TSS, zinc, N+N, and copper in excess of levels known to adversely
26 impact aquatic species and the environment, federal regulations, WQS, Benchmarks, and
27 the CTR (zinc, copper, lead) in violation of the Storm Water Permit's Effluent
28 Limitations and Receiving Water Limitations.

1 119. Plaintiffs are informed and believe, and thereon allege, that during and/or
2 after every significant rain event⁴ or any other storm water or non-storm water discharge
3 that has occurred at the Facility since February 10, 2017, through the present, Defendant
4 has discharged and continues to discharge storm water and non-storm water from the
5 Facility that contains concentrations of pollutants at levels that violate the prohibitions
6 and limitations set forth in the Storm Water Permit, the Federal Effluent Limitations, the
7 Benchmarks, CTR, and the WQS.

F. Defendant's Violations of the Storm Water Permit's Sampling, Reporting, and Monitoring Implementation Plan Requirements

11 120. Plaintiffs are informed and believe, and thereon allege, that Defendant failed
12 and continues to fail to develop an adequate Monitoring Implementation Plan (“MIP”) for
13 industrial operations at the Facility that complies with Section XI of the Storm Water
14 Permit.

121. Plaintiffs are informed and believe, and thereon allege, that Defendant failed
and continues to fail to revise the MIP for the Facility as necessary to ensure compliance
with the Storm Water Permit in violation of Section XI of the Storm Water Permit.

122. Plaintiffs are informed and believe, and thereon allege, that Defendant failed
and continues to fail to implement the MIP at the Facility, in violation of Section XI of
the Storm Water Permit.

123. Plaintiffs are informed and believe, and thereon allege, that Defendant failed
and continues to fail to collect or analyze sufficient storm water samples at the Facility, in
violation of Section XI of the Storm Water Permit.

24 124. Plaintiffs are informed and believe, and thereon allege, that Defendant failed
25 and continues to fail to adequately revise the MIP for the Facility as necessary to ensure
26 compliance with the Storm Water Permit in violation of Section XI of the Storm Water

⁴ A significant rain event is an event that produces storm water runoff, which according to EPA occurs with more than 0.1 inches of precipitation.

1 Permit.

2 125. Plaintiffs are informed and believe, and thereon allege, that Defendant has
3 failed and continues to fail to sample storm water discharges from all discharge locations,
4 in violation of Section XI of the Storm Water Permit.

5 126. Plaintiffs are informed and believe, and thereon allege, that the
6 Owners/Operators of the Facility consistently fail to prepare, implement, and report on its
7 Water Quality Based Corrective Actions as required by the Storm Water Permit.

8 127. Plaintiffs are informed and believe, and thereon allege, that the
9 Owners/Operators of the Facility have consistently failed and continue to fail to report
10 any noncompliance with the Storm Water Permit at the time that the Annual Report is
11 submitted.

12 128. Plaintiffs are informed and believe, and thereon allege, that the
13 Owners/Operators did not report their non-compliance as required by the Storm Water
14 Permit.

15 129. Plaintiffs are informed and believe, and thereon allege, that the
16 Owners/Operators of the Facility fail to collect sufficient storm water samples during
17 QSEs.

18 130. Information available to Plaintiffs are informed and believe, and thereon
19 allege, that the BMPs proffered as implemented in the Facility SWPPP are insufficient
20 and ineffective in reducing pollutants to levels compliant with the Storm Water Permit
21 and/or the CWA.

22 131. Plaintiffs are informed and believe, and thereon allege, that Defendant has
23 failed to submit complete Annual Reports to the Regional Board for the past five
24 reporting years in violation of Section XVI of the Storm Water Permit.

25 **VI. CLAIMS FOR RELIEF**

FIRST CAUSE OF ACTION

**Discharges of Contaminated Storm Water in Violation of
the Storm Water Permit's Effluent Limitations and the Clean Water Act.
33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

132. Plaintiffs incorporate the allegations contained in the above paragraphs as though fully set forth herein.

133. Plaintiffs are informed and believe, and thereon allege, that Defendant failed and continues to fail to reduce or prevent pollutants associated with industrial activities at the Facility from discharging from the Facility through implementation of BMPs that achieve BAT/BCT.

134. Plaintiffs are informed and believe, and thereon allege, that discharges of storm water containing levels of pollutants that do not achieve compliance with BAT/BCT standards from the Facility occur every time storm water discharges from the Facility. Defendant's failure to develop and/or implement BMPs that achieve the pollutant discharge reductions attainable via BAT or BCT at the Facility is a violation of the Storm Water Permit and the CWA. *See* Storm Water Permit, Sections I(D)(Finding 32)V(A); 33 U.S.C. § 1311(b).

135. The Owners/Operators violate and will continue to violate the Storm Water Permit's Effluent Limitations each and every time storm water containing levels of pollutants that do not achieve BAT/BCT standards discharges from the Facility.

136. Plaintiffs are informed and believe, and thereon allege, that the Owners'/Operators' violations of Effluent Limitations of the Storm Water Permit and the CWA are ongoing and continuous.

137. Each day, since at least February 10, 2017, that the Owners/Operators discharge storm water containing pollutants in violation of the Storm Water Permit is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

138. By committing the acts and omissions alleged above, the Owners/Operators are subject to an assessment of civil penalties for each and every violation of the CWA occurring from February 10, 2017 to the present, pursuant to Sections 309(d) and 505 of

the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

139. An action for injunctive relief is authorized by CWA Section 505(a), 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm Plaintiff, Plaintiff's members, and the citizens of the State of California, for which harm Plaintiffs have no plain, speedy, or adequate remedy at law.

140. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual controversy exists as to the rights and other legal relations of the Parties.

WHEREFORE, Plaintiffs prays for judgment against Defendant as set forth hereafter.

SECOND CAUSE OF ACTION

**Violation of Section 301(a) of the Clean Water Act by Discharging Contaminated
Storm Water in Violation of the Storm Water Permit's Numeric Effluent
Limitations.**

U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)

141. Plaintiffs incorporate the allegations contained in the above paragraphs as though fully set forth herein.

142. Plaintiffs are informed and believe, and thereon allege, that Defendants failed and continue to fail to comply with the Storm Water Permit's Numeric Effluent Limitations.

143. Plaintiffs are informed and believe, and thereon allege, that Defendants violated, violate, and will continue to violate the Storm Water Permit's Numeric Effluent Limitations each day that storm water discharges from the Facility. Storm Water Permit, Section V(C).

144. Plaintiffs are informed and believe, and thereon allege, that Defendants violated the Effluent Limitations of the Storm Water Permit and the Clean Water Act within the applicable statute of limitations, and such violations are ongoing and continuous.

145. Plaintiffs are informed and believe, and thereon allege, that Defendants' acts and omissions described herein constitute violations of individual terms of the Storm

1 Water Permit, compliance with which is required to lawfully discharge pollutants to
2 waters of the United States.

3 146. Plaintiffs allege that its members have been harmed by Defendant's acts and
4 omissions described herein and have standing to bring this suit.

5 147. Each and every violation of the Storm Water Permit Effluent Limitations is a
6 separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

7 148. By committing the acts and omissions alleged above, Defendants are subject
8 to an assessment of civil penalties for each and every violation of the CWA occurring
9 from February 10, 2017, to the present, pursuant to Sections 309(d) and 505 of the CWA,
10 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

11 149. An action for injunctive relief is authorized by CWA Section 505(a),
12 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above
13 would irreparably harm Plaintiffs and the citizens of the State of California, for which
14 harm Plaintiff has no plain, speedy, or adequate remedy at law.

15 150. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because
16 an actual controversy exists as to the rights and other legal relations of the Parties.

17 WHEREFORE, Plaintiffs pray for judgment against Defendant as set forth
18 hereafter.

THIRD CAUSE OF ACTION

**Defendant's Discharges of Contaminated Storm Water in Violation of
the Storm Water Permit's Receiving Water Limitations and the Clean Water Act.
33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

22 151. Plaintiffs incorporate the allegations contained in the above paragraphs as
23 though fully set forth herein.

152. Plaintiffs are informed and believe, and thereon allege, that discharges of
storm water containing levels of pollutants that adversely impact human health and/or the
environment from the Facility occur each time storm water discharges from the Facility.

27 153. Plaintiffs are informed and believe, and thereon allege, that storm water
28 containing levels of pollutants that cause or contribute to exceedances of water quality

1 standards, including but not limited to NELs, has discharged and continues to discharge
2 from the Facility each time storm water discharges from the Facility.

3 154. The Owners/Operators violate and will continue to violate the Storm Water
4 Permit's Receiving Water Limitations each and every time storm water containing levels
5 of pollutants that adversely impact human health and/or the environment, and that cause
6 or contribute to exceedances of WQS discharges from the Facility.

7 155. Plaintiffs are informed and believe, and thereon allege, that the
8 Owners'/Operators' violations of Receiving Water Limitations of the Storm Water Permit
9 and the CWA are ongoing and continuous.

10 156. Each and every violation of the Storm Water Permits' Receiving Water
11 Limitations is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. §
12 1311(a).

13 157. By committing the acts and omissions alleged above, the Owners/Operators
14 are subject to an assessment of civil penalties for each and every violation of the CWA
15 occurring from February 10, 2017 to the present, pursuant to Sections 309(d) and 505 of
16 the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

17 158. An action for injunctive relief under the Clean Water Act is authorized by
18 Section 505(a), 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions
19 alleged above would irreparably harm Plaintiff, Plaintiff's members, and the citizens of
20 the State of California, for which harm they have no plain, speedy, or adequate remedy at
21 law.

22 159. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because
23 an actual controversy exists as to the rights and other legal relations of the Parties.

24 WHEREFORE, Plaintiffs pray for judgment against Defendant as set forth
25 hereafter.

FOURTH CAUSE OF ACTION

**Defendant's Failure to Adequately Develop, Implement, and/or
Revise a Storm Water Pollutant Prevention Plan in Violation of the
Storm Water Permit and the Clean Water Act.
33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

160. Plaintiffs incorporate the allegations contained in the above paragraphs as though fully set forth herein.

161. Plaintiffs are informed and believe, and thereon allege, that the Owners/Operators have failed and continue to fail to develop an adequate SWPPP for the Facility, in violation of the Storm Water Permit.

162. Plaintiffs are informed and believe, and thereon allege, that the Owners/Operators have failed and continue to fail to adequately implement a SWPPP for the Facility, in violation of the Storm Water Permit.

163. Plaintiffs are informed and believe, and thereon allege, that Owners/Operators have failed and continue to fail to adequately revise the SWPPP for the Facility, in violation of the Storm Water Permit.

164. The Owners/Operators have been in violation of the Storm Water Permit at the Facility every day from February 10, 2017, to the present.

165. The Owners'/Operators' violations of the Storm Water Permit and the CWA at the Facility are ongoing and continuous.

166. The Owners/Operators will continue to be in violation of the Storm Water Permit and the CWA each and every day the Owners/Operators fail to adequately develop, implement, and/or revise the SWPPP for the Facility.

167. Each and every violation of the Storm Water Permit's SWPPP requirements at the Facility is a separate and distinct violation of the CWA.

168. By committing the acts and omissions alleged above, the Owners/Operators are subject to an assessment of civil penalties for each and every violation of the CWA occurring from February 10, 2017, to the present, pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

1 169. An action for injunctive relief under the CWA is authorized by Section
2 505(a) of the CWA, 33 U.S.C. § 1365(a). Continuing commission of the acts and
3 omissions alleged above would irreparably harm Plaintiffs, their members, and the
4 citizens of the State of California, for which harm they have no plain, speedy, or adequate
5 remedy at law.

6 170. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because
7 an actual controversy exists as to the rights and other legal relations of the Parties.

8 WHEREFORE, Plaintiffs pray for judgment against Defendant as set forth
9 hereafter.

FIFTH CAUSE OF ACTION

**Defendant's Failure to Adequately Develop, Implement, and/or Revise a Monitoring and Reporting Plan in Violation of the Storm Water Permit and the Clean Water Act.
U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

171. Plaintiffs incorporate the allegations contained in the above paragraphs as
though fully set forth herein.

16 172. Plaintiffs are informed and believe, and thereon allege, that the
17 Owners/Operators have failed and continue to fail to develop an adequate MIP for the
18 Facility, in violation of the Storm Water Permit.

19 173. Plaintiffs are informed and believe, and thereon allege, that the
20 Owners/Operators have failed and continue to fail to adequately implement an MIP for
21 the Facility, in violation of the Storm Water Permit.

22 174. Plaintiffs are informed and believe, and thereon allege, that the
23 Owners/Operators have failed and continue to fail to adequately revise an MIP for the
24 Facility, in violation of the Storm Water Permit.

175. The Owners/Operators have been in violation of the Storm Water Permit's monitoring requirements at the Facility every day from February 10, 2017 to the present.

27 176. The Owners'/Operators' violations of its Storm Water Permit's monitoring
28 requirements and the CWA at the Facility are ongoing and continuous.

177. The Owners/Operators will continue to be in violation of Section XI of the Storm Water Permit, and the CWA each and every day they fail to adequately develop, implement, and/or revise an MIP for the Facility.

178. Each and every violation of the Storm Water Permit's MIP requirements at the Facility is a separate and distinct violation of the CWA.

179. By committing the acts and omissions alleged above, the Owners/Operators are subject to an assessment of civil penalties for each and every violation of the CWA occurring from February 10, 2017, to the present, pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

180. An action for injunctive relief under the CWA is authorized by Section 505(a) of the CWA, 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm Plaintiffs, their members, and the citizens of the State of California, for which harm they have no plain, speedy, or adequate remedy at law.

181. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual controversy exists as to the rights and other legal relations of the Parties.

WHEREFORE, Plaintiffs pray for judgment against Defendant as set forth hereafter.

SIXTH CAUSE OF ACTION

Defendant's Failure to Report as Required by the Storm Water Permit in Violation of the Storm Water Permit and the Clean Water Act.

33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)

182. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

183. Section XVI of the Storm Water Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. Section XVI of the Permit requires that the Annual Report include a compliance checklist that indicates that a discharger complies with and has addressed all applicable requirements of the Permit, an affirmation of visual observations and sampling results, an identification and explanation

1 of any non-compliance, an identification of all revisions made to the SWPPP within the
2 reporting year, and the date of the Annual Evaluation. Storm Water Permit, Section XVI.
3 Laboratory reports of sample analysis, the annual comprehensive site compliance
4 evaluation report, an explanation of why a permittee did not implement any activities
5 required are also reporting requirements throughout the reporting year and are typically
6 uploaded into the SMARTS portal.

7 184. The Permit also requires a permittee whose discharges violate the Storm
8 Water Permit's Receiving Water Limitations or water quality standards, such as, NALs,
9 TMDLs, TMDL-Specific Numeric Action Levels and NELs to implement additional
10 BMPs or other control measures that are tailored to that facility in order to attain
11 compliance with the receiving water limitation. A Discharger that is notified by a
12 Regional Board or who determines the discharge is causing or contributing to an
13 exceedance of a water quality standard must comply with the Water Quality Based
14 Corrective Actions in Section XX(B) of the Permit and report to the Regional Board
15 regarding same. *See* Storm Water Permit, Section XX(B).

16 185. Plaintiffs are informed and believe, and thereon allege, that the
17 Owners/Operators have failed to accurately report their non-compliance with the Storm
18 Water Permit and correctly report storm water sampling analysis compliance in the
19 Facility's Annual Reports. Further, the Facility's ERA Reports are insufficient, as
20 evidenced by subsequent storm water sampling results over the NELs. As such, the
21 Owners/Operators are in daily violation of the Storm Water Permit.

22 186. The Facility Owners/Operators have been in violation of Sections XVI and
23 XX of the Storm Water Permit since at least February 10, 2017.

24 187. The Owners'/Operators' violations of the reporting requirements of the
25 Storm Water Permit and the CWA are ongoing and continuous.

26 188. By committing the acts and omissions alleged above, the Owners/Operators
27 of the Facility are subject to an assessment of civil penalties for each and every violation
28 of the CWA occurring from February 10, 2017, to the present, pursuant to Sections

1 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

2 189. An action for injunctive relief under the CWA is authorized by Section
3 505(a) of the CWA, 33 U.S.C. § 1365(a). Continuing commission of the acts and
4 omissions alleged above would irreparably harm Plaintiffs, their members, and the
5 citizens of the State of California, for which harm they have no plain, speedy, or adequate
6 remedy at law.

7 190. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because
8 an actual controversy exists as to the rights and other legal relations of the Parties.

9 WHEREFORE, Plaintiffs pray for judgment against Defendant as set forth
10 hereafter.

11 **VII. RELIEF REQUESTED**

12 191. Wherefore, Plaintiff respectfully requests that this Court grant the following
13 relief:

14 a. A Court order declaring Defendant to have violated and to be in
15 violation of Sections 301(a) and (b) and 402 of the Clean Water Act, 33 U.S.C. §§
16 1311(a) and (b) and 1342, for its unlawful discharges of pollutants from the Facility in
17 violation of a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. §
18 1342(p), for failing to meet effluent standards limitations which include BAT/BCT
19 requirements, and for failing to comply with the substantive and procedural
20 requirements of the Storm Water Permit and the CWA;

21 b. A Court order enjoining Defendant from violating the substantive and
22 procedural requirements of the Storm Water Permit and Sections 301(a) and 402 of
23 the CWA, 33 U.S.C. §§ 1311(a), 1342;

24 c. A Court order assessing civil monetary penalties for each violation of
25 the CWA occurring on or after November 2, 2015, of \$59,937 per day, as permitted
26 by 33 U.S.C. § 1319(d) and Adjustment of Civil Monetary Penalties for Inflation, 40
27 C.F.R. § 19.4;

28 d. A Court order awarding Plaintiff its reasonable costs of suit, including

1 attorney, witness, expert, and consultant fees, as permitted by Section 505(d) of the
2 Clean Water Act, 33 U.S.C. § 1365(d); and

3 e. Any other relief as this Court may deem appropriate.

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9 Dated: October 17, 2022

Respectfully submitted,

10
11 /s/ Anthony M. Barnes

12 Anthony M. Barnes
13 AQUA TERRA AERIS LAW GROUP
14 Attorneys for Plaintiffs
15 LOS ANGELES WATERKEEPER
CALIFORNIA COASTKEEPER
ALLIANCE